

(1940) 12 MAD CK 0005
In the Madras High Court

Pudikutty Unneeri

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 13-12-1940

Acts Referred:

Citation : AIR 1941 Mad 657 : (1941) 53 LW 712 : (1941) 1 MLJ 624

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant had an old house occupying the site A, B, D, C in the plan filed by him. That house fell into a state of disrepair

and the Commissioner of the Calicut Municipality ordered its demolition. The appellant wished to reconstruct the house and he submitted a plan

proposing to build the house on E, F, D, G. That plan was approved and a licence (Ex. D) was issued in which a note was added ""The street

alignment of 6 feet--Mooriet Road and the Coast Road on the west should be strictly observed."" This note was added to remind the appellant of

the provisions of Section 167 of the District Municipalities Act to the effect that no person should construct any portion of any building within a

street alignment as defined u/s 166. The findings of the Court below are that after the building was constructed in accordance with this plan, the

appellant added a pial on the remaining area of his site, that is, the land lying between G, E, F, D and A, B, D, C. When the Municipality

discovered this construction they ordered him to demolish it and threatened him that if he did not do so they would demolish it themselves and

charge him with the cost. The plaintiff thereupon brought the present suit for a permanent injunction to restrain the defendant Calicut Municipality

from demolishing this pial. The suit was dismissed. The appellant preferred an appeal to the District Court which was also dismissed. Hence this second, appeal by the plaintiff.

2. There is no doubt in my mind that a pial does form part , of a building and that therefore the appellant committed a breach of the licence and

also failed to comply with the provisions of Section 167. The learned advocate for the appellant argues that Section 183 deals with the grant of

licences for verandahs and not Section 167; but the verandahs referred to in Section 183 are of the nature of balconies, which project over a

street. That section does not relate to pials, and the appellant's pial does not overhang the street. It is constructed on the plaintiff's own property.

The Chairman, Municipal Council Vs. Subba Pandithar, , upon which reliance has been placed by the appellant, merely says that where a person

holding land has encroached upon the street and has had possession of it for over the statutory period he acquired a right to the encroached area

by prescription; so that the land becomes his,. and that he can therefore do what he likes with the land. I do not see how that decision helps the

appellant in any way.

3. The appellant next contends that he is entitled to compensation u/s 168. Section 168 does apply to a person who is reconstructing his house

and who, because of an order of the Municipality, has to keep his house out of the street alignment. Such a person becomes entitled under this

section to be compensated for his compliance with the Municipality's order. Unfortunately for the appellant, however, the plan submitted by him

and his application for a licence do not show that he restricted his building on account of some order of the Municipality; but it is probably true, as

the appellant states, that it was because the Municipal Surveyor told him that he must build within the restricted area so as to allow a six-feet

margin from the street boundary that he submitted the plan he did. This point was not however raised in either of the Courts below--nor is it to be

found in the grounds of appeal. In the absence of pleadings and evidence, it cannot be held that the plaintiff is entitled to compensation. The

appellant cannot therefore be given any remedy in this suit; but the Municipality should, in my opinion, have given him compensation, not for

demolishing his pial, but for having to build his house on the restricted area.

4. The appeal is dismissed with costs.